

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 416 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRABHAI RATILAL MODI

Versus

RANJITBHAI PURSHOTTAMBHAI SHAH

Appearance:

MS MEGHA JANI for Petitioners

MR RAJIV I CHOPRA for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 05/04/99

ORAL JUDGEMENT

Rule. Service of rule waived Mr. Rajiv I. Chopra,
learned advocate for the respondent.

2. Following order was passed on 11/3/1999 :-

"According to the petitioners, deceased-tenant
Shantaben had handed over possession of the suit

premises to the petitioners and had shifted to Rajkot and that the respondent herein was not residing with the deceased in the suit premises at the time of her death as the respondent is an employee of the District Panchayat, Rajkot and, therefore, the respondent was not entitled to get protection under Section 5(11)(c) of the Rent Act. According to the learned counsel for the petitioner, if the question about entitlement of the respondent to claim protection under Section 5(11)(c) is not finally decided at this stage, the respondent on the strength of the impugned order would come back to the suit premises and claim protection of interim injunction during pendency of the suit; hence, notwithstanding the liberty granted by the learned trial Court to the defendants to contest the claim of the respondent under Section 5(11)(c), this Court should interfere in the revision application and require the trial Court to decide the aforesaid issue after taking evidence and on merits.

2. Notice for final disposal returnable on 5/4/1999.

Till then, there shall be ad-interim stay in terms of para. 10(B)."

3. Today the respondent has filed affidavit in reply in the form of a written statement inter-alia stating as under :-

"The present respondent by way of this written statement humbly request the honourable High Court that :

A. During pendency of HRP Suit No. 385 of 1982 of Small Causes Court, Ahmedabad and during pendency of the present petition, compromise between the present petitioners and respondent is entered into and thereto giving effect to the said compromise, the parties of this present petition were pleased to sign a declaration and by virtue of that declaration the present respondent had waived each and every type of rights in favour of the petitioners. The declaration is annexed herewith at Annexure-A.

B. For the very effect respondent had also
filed pursis to withdraw the application
below exh. 49 which was recorded by the
honourable Small Causes Judge, Court
No.8, Ahmedabad.

2. In these type of circumstances as the
respondent again confirms and declares that each
and every rights regarding the suit premises
inter alia 1303, Relief Road, Near Nagar Chasma
Ghar, Ahmedabad of HRP Suit No. 385 of 1992 and
to pass necessary orders in favour of the present
petitioners and the respondent has no objection
to grant the prayer as prayed for in para. 10(a)
of the present petition and the costs of the suit
is to bear each party."

4. In view of the aforesaid affidavit in reply
annexing therewith a copy of the declaration showing
settlement between the parties, following order is passed
:-

Impugned order dated 23/2/1999 passed below exh.
46 in HRP Suit No. 385 of 1992 is hereby quashed
and set aside.

Trial Court will consider the effect of the
aforesaid affidavit in reply and declaration
showing settlement between the parties on the
pending suit bearing HRP Suit No. 385 of 1992 and
pass appropriate orders of final disposal of the
said suit.

Rule made absolute in the aforesaid terms. No
order as to cost.

* * *

PVR.